

(B) The malfunction will not occur in production vehicles or engines in use; and

(C) The deterioration factor generated by the durability data vehicle or engine will remain unaffected by the malfunction or by the corrective action (e.g., the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emission test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability data vehicle or engine.

(4) If a part failure or system malfunction occurrence and/or repair has rendered the vehicle/engine unrepresentative of vehicles in use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) *Maintenance on emission data vehicles and engines.* (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or

equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components; or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission data vehicles; or

(3) Unless specifically authorized by the Administrator.

(g) Complete emission tests (see §§ 86.106-96 through 86.145-82) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and in a representative condition. Required air conditioning system maintenance is performed as unscheduled maintenance and does not require the Administrator's approval.

§ 86.1835-01 Confirmatory certification testing.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate,

for the purposes of conducting emissions tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(i) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data vehicle which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.1833-01(a)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833-01(a)(3), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.1829-01(b). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(ii) For those vehicles parameters which the Administrator has not determined to be subject to adjustment during testing in accordance with § 86.1833-01(a)(1), the vehicle presented to the

Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.1807-01) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission data vehicle.

(2) If the Administrator determines that the test data developed on an emission data vehicle under paragraph (a)(1) of this section would cause that vehicle to fail under the provisions of § 86.1841-01, then the following procedure shall be observed:

(i) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.1833-01(a)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833-01(a)(3). Other maintenance or repairs may be performed in accordance with § 86.1834-01. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(ii) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(3) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(1) of this section to enable the Administrator to determine whether an emission-data vehicle would fail, the manufacturer may request a retest in

accordance with the provisions of paragraph (a)(2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(4) Retesting for fuel economy reasons may be conducted under the provisions of 40 CFR 600.008-01.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrator determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the test as measured in accordance with the procedures in 40 CFR Part 600 is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator for that model year; or

(v) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is a potential fuel economy leader for a class of vehicles based on Administrator provided cut points for that model year.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower

percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) For use in the fuel economy program described in 40 CFR part 600, the manufacturer may, in lieu of conducting a retest, accept as official the lower of the original and confirmatory test fuel economy results.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). In lieu of conducting a second retest, the manufacturer may accept as official (for use in the fuel economy program) the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results.

(c) *Official test determination.* (1) Whenever the Administrator or the manufacturer conducts a confirmatory test segment on a test vehicle, the results of that test segment, unless subsequently invalidated by the Administrator, shall comprise the official data for that test segment for the vehicle at the prescribed test point and the manufacturer's original test data for that test segment for that prescribed test point shall not be used in determining compliance with emission standards.

(i) If the Administrator or the manufacturer conducts more than one passing, valid, confirmatory test, the results from the first passing, valid confirmatory test shall be considered official and used in determining compliance with emission standards.

(ii) Official test results for fuel economy purposes are determined in accordance with the provisions of 40 CFR 600.008-01.

(iii) The Administrator may stop a test after any evaporative test segment

and use as official data any valid results obtained up to that point in the test, as described in subpart B of this part.

(2) Whenever the Administrator or the manufacturer does not conduct a confirmatory test on a test vehicle at a test point, the manufacturer's original test data will be accepted as the official data for that point.

(i) If the Administrator makes a determination based on testing under paragraph (a) of this section (or other appropriate correlation test data), that there is a lack of correlation between the manufacturer's test equipment or procedures and the test equipment or procedures used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer.

(ii) If the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this subpart, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii) If the manufacturer conducts more than one test on an emission data vehicle in the same configuration (excluding confirmatory tests run under paragraph (b) of this section), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(d) Upon request of the manufacturer, the Administrator may issue a conditional certificate of conformity for a test group which has not completed the Administrator testing required under paragraph (b) of this section. Such a certificate will be issued based upon the condition that the confirmatory testing be completed in an expedited manner and that the results of the testing be in compliance with all standards and procedures.

(1) If, based on this testing or any other information, the Administrator later determines that the vehicles included in this test group do not meet the applicable standards, the Administrator will notify the manufacturer

that the certificate is suspended. The certificate may be suspended in whole or in part as determined by the Administrator. Upon such a notification, the manufacturer must immediately cease the introduction of the affected vehicles into commerce. The manufacturer may request a hearing to appeal the Administrator's decision using the provisions of § 86.1853-01.

(2) Production of vehicles by a manufacturer under the terms of this paragraph (d) will be deemed to be a consent to recall all vehicles in the test group which the Administrator determines do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

§ 86.1836-01 Manufacturer-supplied production vehicles for testing.

Any manufacturer obtaining certification under this subpart shall supply to the Administrator, upon request, a reasonable number of production vehicles selected by the Administrator which are representative of the engines, emission control systems, fuel systems, and transmission offered and typical of production models available for sale under the certificate. These vehicles shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 86.1837-01 Rounding of emission measurements.

(a) Unless otherwise specified, the results of all emission tests shall be rounded to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to one additional significant figure, in accordance with the Rounding-Off Method specified in ASTM E29-93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1).

(b) Fleet average NO_x value calculations, where applicable, must be rounded before comparing with the applicable fleet average standard and calculating credits generated or needed as follows: manufacturers must round to the same number of significant figures